BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, TORRANCE UNIFIED SCHOOL DISTRICT, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, and LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.	OAH CASE NO. 2010110325 ORDER DENYING IN PART AND GRANTING IN PART TORRANCE UNIFIED SCHOOL DISTRICT'S MOTION TO DISMISS

PROCEDURAL HISTORY

Student filed a Due Process Hearing Request (complaint) on November 8, 2010, naming the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), the California Department of Education (CDE), the California Health and Human Services Agency (CHHS), the California Department of Mental Health (CDMH), and the Los Angeles County Department of Mental Health (LACDMH). The Office of Administrative Hearings (OAH) dismissed Student's complaint as to CDE in an order issued December 3, 2010. In an order issued December 6, 2010, OAH denied CDMH's motion to dismiss itself as a party, but granted its motion to dismiss issue two of Student's complaint.

On December 14, 2010, TUSD filed a motion to dismiss it as a party to this case. TUSD raises three grounds in its motion. First, it alleges that it is not the appropriate local educational agency (LEA) because Student was housed in a juvenile correctional facility at all times relevant to the complaint and therefore LACOE had responsibility for his education. In its discussion of this issue, TUSD also contends that some of the time frames for which Student requests an order from OAH as to agency responsibility are not yet ripe for adjudication. TUSD also alleges that the claims and proposed remedies in Student's complaint relating to "similarly situated" students are beyond the jurisdiction of OAH. Finally, TUSD alleges that OAH does not have jurisdiction to adjudicate claims that do not arise under the Individuals with Disabilities Education Act (IDEA). Therefore, Student's state and federal civil rights claims contained in his issue two must be dismissed.

As discussed more fully below, TUSD's argument that it is not appropriately named as a possibly responsible LEA is not supported by the record, and thus its motion to dismiss it as a party is denied. However, its arguments that some of Student's claims are not ripe and that OAH does not have jurisdiction to hear and issue a remedy against other students, in the nature of a class action, are well-taken, and those allegations will be dismissed. With regard to Student's issue two alleging violations of state and federal civil rights laws, OAH already dismissed those allegations on December 6, 2010.

FACTUAL BACKGROUND

Student's complaint generally seeks an OAH determination as to what agency is responsible for implementing mental health services through Student's IEP and through the IEP's of similarly situated children. Student has broken his contentions into four time frames, beginning with the Governor's veto on October 8, 2010, of state funding to county mental agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq. Student requests a determination of agency responsibility during each of the discrete periods of time.

Student's complaint alleges the following facts, which, for purposes of a motion to dismiss, are accepted as true. Student lives with his parents within the boundaries of TUSD. He was previously found eligible for special education and related services while he was in third grade, and received services to address his emotional needs. Starting in February 2010, Student began a downward spiral in his emotional well-being, resulting in two suicide attempts. He was hospitalized a number of times and placed in local residential centers when released. TUSD referred him to LACDMH for a further assessment, which LACDMH completed on August 27, 2010. That assessment recommended that Student's IEP team place him in a residential treatment center.

On September 20, 2010, Student was again released from a hospital stay. He left home an hour after arriving there, and was shortly picked up by the police and taken to juvenile hall. On September 27, 2010, Student's expanded individualized education program (IEP) team convened at juvenile hall. The IEP team consisted of TUSD and LACDMH. Both agencies agreed that Student required a residential treatment center placement. TUSD agree to pay for the educational costs of the placement and LACDMH agreed to pay the mental health costs. Student's mother signed the IEP. LACDMH then began a search for an appropriate placement. It determined that the Devereaux treatment center in Texas was appropriate for Student and that it would accept him. However, subsequently the Governor vetoed the mental health funding. On October 12, 2010, while appearing in court to discuss Student's residential placement, the public defender informed Student's parents that LACDMH was not longer funding mental health placements. Student remained in juvenile hall. On November 3, 2010, LACOE agreed to implement Student's IEP. Student's mother signed a new IEP that day.

DETERMINATION OF ISSUES

I. Whether TUSD is a Proper Respondent?

A. Time Period up until November 8, 2010, when Student Filed his Complaint

TUSD contends that it is not an appropriate respondent for any time period during which Student was housed in juvenile hall. Generally speaking, in California, a county office of education is responsible for the provision of a free appropriate public education (FAPE) to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) Based upon Student's placement in juvenile hall on or about September 20, 2010, and his continued residence there at the time the complaint was filed, TUSD is correct that normally LACOE would be the agency responsible for providing a FAPE to Student, and therefore responsible for implementing his IEP, including at least the educational portion of a residential placement.

However, special education due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) In this case, Student alleges in his complaint that it was TUSD rather than LACOE that convened an IEP team meeting for him on September 27, 2010, agreed with LACDMH that Student required a residential placement, and agreed to fund the educational portion of that placement. Thereafter, it was TUSD which developed the IEP document that Student's mother signed on September 27. It is unclear why TUSD took on these responsibilities and why LACOE appears not to have participated in the IEP process even though Student had resided in juvenile hall for approximately a week at the time the IEP meeting convened.

While arguing in its motion that it is not the appropriate local educational agency due to Student's residence at juvenile hall, TUSD provided a declaration from Rudy Delana, a TUSD program specialist, which demonstrates that TUSD assumed the responsibility for meeting with LACDMH and developing an IEP for Student placing him at a residential treatment center. Mr. Delana's declaration states that he was responsible for coordinating the date for Student's September 27, 2010 IEP meeting. Mr. Delana contacted the LACDMH assessor as soon as he received her assessment report and arranged a date for the IEP meeting acceptable to both her and Student's parents. Mr. Delana then attended the IEP meeting on September 27 and helped develop the IEP. A copy of the September 27 IEP is attached as an exhibit to his declaration. There is no indication that anyone from LACOE attended the meeting, assisted in developing the IEP, or agreed to fund Student's residential placement.

Therefore, although LACOE, as the county office of education responsible for educating students at the juvenile hall center where Student resided, generally is responsible for Student's education while he is at juvenile hall, Student has raised a colorable claim that TUSD may at least be jointly responsible for any violations of FAPE concerning Student's

September 27, 2010 IEP. TUSD's motion to dismiss it as a respondent for the time period up to when Student filed his complaint is therefore denied.

B. Time Periods After November 8, 2010

Student is seeking a determination by OAH of the public agency responsible for provision of mental health services, including residential placement from September 27, 2010, through the end date of a federal temporary restraining order now in effect involving Student. Student also seeks compensatory mental health services for loss of educational benefit during the time he was in juvenile hall. The temporary restraining order may be in effect until January 14, 2011.

Generally, there is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

This concept of ripeness, however, must be analyzed within the context of the purposes of the IDEA (20 U.S.C. § 1400 et. seq.), which is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Based upon the language of the IDEA and California's parallel statutes concerning special education, a party may present a claim based upon a *proposal or refusal* to initiate or change a child's educational placement. Therefore, if a party has indicated that it is proposing to change an aspect of a child's special education, or that it will refuse to implement a program, a claim will be ripe even if the change or refusal has not yet occurred. Concretely, this concept is demonstrated in a situation where a school district has proposed changing a student's placement, the parents do not agree to the proposed change, file for due process, and the student remains in the initial placement under stay put while the matter is

resolved. Although in that situation the change has not been implemented, since it was proposed, the student's parents have a right to file for due process.

The circumstances in the instant case are distinct as they apply to TUSD. In his complaint, Student does not allege that TUSD has stated or otherwise communicated that it will not implement his IEP after November 8, 2010, or that it will not implement the IEP if Student is removed from juvenile hall and placed at a residential treatment center.[1] Any allegations to that effect as to TUSD are purely speculative. TUSD is therefore correct that allegations concerning its provision of FAPE to Student for any time period after the filing of Student's complaint are not ripe for adjudication. TUSD's motion to dismiss Student's allegations against it as to any date after November 8, 2010, is therefore granted.

II. Allegations as to "Similarly Situated" Students

Student alleges violations by the named respondent agencies as to himself and similarly situated students. Student's requests for remedies include "structural and systemic" relief for all students affected by the Governor's veto of mental health funding and the resulting alleged failure by the named agencies to provide all such students with appropriate mental health services. In effect, Student's complaint attempts to create a class action with Student as the lead plaintiff.

In his opposition to TUSD's motion to dismiss, Student acknowledges that he raised claims as to other student's "in an abundance of caution." He does not cite any authority for presenting what amounts to a class action claim to OAH and the undersigned knows of none. Given that OAH's authority is limited to disputes between a student and the agencies charged with providing him or her with a FAPE, Student's class allegations are beyond OAH's jurisdiction. TUSD's motion to dismiss claims as to similarly situated students is therefore granted.

ORDER

1. TUSD's motion to dismiss it as a party for time periods prior to November 8, 2010, is denied.

2. TUSD's motion to dismiss it as a party to allegations arising after November 8, 2010, is granted.

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[1] In the District's motion to dismiss and in Student's opposition, the parties acknowledge that Student was transported to Devereaux, Texas on November 9, 2010, and that TUSD and LACDMH are presently funding the placement.

3. TUSD's motion to dismiss all allegations as to similarly situated students is granted as to all named respondents.

4. TUSD's motion to dismiss Student's issue two, alleging violations of state and federal civil rights statutes is moot as that issue was previously dismissed by OAH

5. This matter will proceed as to all remaining allegations as presently scheduled.

Dated: December 22, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings